(2010) 12 P&H CK 0599

In the Punjab And Haryana At Chandigarh

Case No : C.R. No. 5161 of 2002

State of Punjab and Another — APPELLANT

Vs

Rajiv Gupta and Others — RESPONDENT

Date of Decision : 07-12-2010

Acts Referred:
Stamp Act, 1899 — Section 47A

Citation : (2010) 12 P&H CK 0599

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hemant Gupta, J.—The State is in revision aggrieved against an order passed by the learned first Appellate Court on 03.05.2002 setting aside the order passed by the Collector finding that the document of sale dated 12.10.2000 is under valued for the purpose of stamp duty.

2. The sale deed dated 12.10.2000 was registered by the Sub Registrar in respect of 2.23 Marlas of land purportedly executed for a sale consideration of Rs. 1,80,000/-. The Sub Registrar made reference to the District Collector on 21.11.2000 that the document of sale is under valued on the basis of a complaint made by a person, who had produced an agreement to sell for the said land for a sum of Rs. 3,40,000/-.

3. The Collector held that the document is under valued by Rs. 1,60,000/-. To return such finding, the Collector relied upon an sale deed dated 12.10.2000 was agreed to be sold for a sum of Rs. 3,40,000 in favour of one Vinod Kumar. The said agreement to sell was produced by none else, but the vendor. Thus, it was found that the document of sale is under valued for the purpose of stamp duty.

4. In appeal, the learned first Appellate Court relied upon a judgment of this Court reported as Abhinav Kumar v. State of Haryana 2001 (1) PLR 598, wherein it was held that the reference in respect of under valuation of a document is

required to be issued soon after the document is presented for registration. Since the reference has been made after 40 days of registration, the same was not maintainable and consequently the demand raised was set aside.

5. Section 47-A (1), (2) & (3) of the Indian Stamp Act prior to its amendment vide Punjab Act No. 14 of 2001 reads as under:

47-A. Instruments under valued how to be dealt with: (1) If the Registering Officer appointed under the Registration Act, 1908 (Central Act No. 16 of 1908), while registering any instrument relating to the transfer of any property, has reason to believe that the value of the property or consideration, as the case may be, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector, for determination of the value of the property or the consideration, as the case may be, and the proper duty payable thereon.

(2) On receipt of reference under Sub-section (1), the Collector shall, after giving the parties reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules under this Act, determine the value or consideration and the duty as aforesaid and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty.

(3) The Collector may, suo motu or on the receipt of a reference from the Inspector General of Registration or Registrar of a district appointed under the Registration Act, 1908 (Central Act No. 16 of 1908), in whose jurisdiction the property or any portion thereof, which is the subject matter of the instrument, is situated or on the receipt of a report of audit by the Comptroller and Auditor General of India or by any other authority authorized by the State Government in this behalf or otherwise, within a period of three years from the date of the registration of an instrument, call for and examine any instrument for the purposes of satisfying himself as to the correctness of the value of the property or of the consideration disclosed and all other facts and circumstances affecting the chargeability of the instrument or as to the true character and description thereof and the amount of the duty with which it was chargeable and if after such examination, he has reason to believe that proper duty has not been paid, he may, after giving the person concerned reasonable opportunity of being heard and after holding an enquiry in the manner provided under Sub-section (2), determine the value of the property or the consideration or the character or description of instrument and the duty with which it was chargeable and the deficient amount of duty, would be payable by the person liable to pay the duty.

6. In Abhinav Kumar''s case (supra), the Court has relied upon Sub-clause (1) of Section 47-A of the Act to return a find that the Sub Registrar can make reference soon after registering the instrument. The said finding is, in fact, based upon Sub-clause (1) of Section 47-A of the Act.

7. Sub-section (3) contemplates that the Collector can suo motu or on the receipt of a reference, initiate proceedings in respect of any property or any

portion thereof, if it is found to be deficient within a period of three years from the date of registration of a instrument. Thus, the Collector was competent to issue show cause notice either on a reference of the of registration of the instrument. Such cub-clause (3) has not been noticed in Abhinav Kumar''s case.

8. A Division Bench of this Court in a judgment reported as Surjit Singh v. State of Punjab 2008(4) PLR 309 has held that the Collector on his own motion within a period of three years is competenet to call for and examine any instrument for the purpose of satisfying himself with regard to the correctness of the property or the consideration disclosed.

9. It was held to the following effect:

5. A perusal of Sub-section (3) of Section 47-a of the Act would show that the collector on his own motion within a period of three years from the date of registration of an instrument is competent to call for and examine any such instrument for the purposes of satisfying himself with regard to the correctness of the value of the property or for the consideration disclosed. He can also consider all other facts and circumstances affecting the chargeability of the instrument or as to the true character and description of the same. After such an examination, if he has reason to believe that proper duty has not been paid then he may proceed to give reasonable opportunity of hearing and also hold an enquiry in the manner provided under Sub-section (2) of Section 47-a of the Act, to determine the value of the property or the consideration etc. If he finds that there is deficiency in payment of duty then he may recover the same from the person liable to pay the duty along with interest from the date of registration till the payment of deficient amount.

10. Considering the Abhinav Kumar''s case, a Single Judge of this Court in a judgment reported as Dharam Kaur v. State of Punjab and others 2009(1) PLR 590, relying upon Sub-clause (3), it was held that the It was held to the following effect:

13. Mr. Lobana, learned Counsel for the Petitioner also contended that in this case references have been made after more than a month, therefore, were liable to be rejected. However, this plea of the Petitioner cannot be accepted as the limitation to take action u/s 47-A (3) is three years.

The reading of Section 47-A (3) shows that in two contingencies jurisdiction can be exercised i.e. on receipt of reference from the Inspector General of Registration or the Registrar of District. The Collector may also suo motu take action.

Provision of Section 47-A (3) does not specifically mention that the exercise of powers suo motu is to be done by him or it can also be at the instance of aggrieved party or any other person. Thus, it would be immaterial whether the collector is moved by the Registrar or any person uninterested, interested or aggrieved. Thus, no fault can be found with the cognizance taken by the

Collector u/s 47-A (3) of the Act. The contention of the learned Counsel for the Petitioner, thus, deserves to be rejected.

11. Similarly, in Balbir Singh v. State of Haryana and Ors. 2007(2) PLR 66, a Single Bench of this Court, considering the Abhinav Kumar''s case and relying upon decision dated 06.05.2004 rendered in titled "State of Punjab v. Kunda Singh" CWP No. 16128 of 2001, held that the Collector can pass an order to make good the deficiency in the stamp duty, if the proceedings are initiated within a period of three years from the date of registration of the document. In Kunda Singh''s case (supra), it was held to the following effect:

We are unable to agree with the findings recorded by the learned Additional District Judge inasmuch as the learned Additional District Judge has not considered the amended provisions of Sub-Section 3 of Section 47A substituted vide Punjab Act No. 17 of 1994 w.e.f. 23.6.1994. As per the amended provisions of law, the Collector suo motu or on receipt of reference from the Inspector General of Registration or Registrar of a District appointed under the Registration Act in whose jurisdiction the property or any portion thereof which is the subject matter of the instrument is situated or on the receipt of the report of audit by the Comptroller and Auditor General of India or by any other authority authorized by the State Government in this behalf or otherwise within a period of 3 years from the date of the registration of an instrument is empowered to call for and examine any instrument for the purpose of satisfying himself as to the correctness of the value of the property or of such consideration disclosed.

In the present case, the Collector has passed order on 29.5.1999 i.e. calling upon the Respondents herein to make good the shortage of the stamp duty. Such an order itself is within 3 years from the date of registration of the instrument. Therefore, it cannot be said that the order of the Collector is beyond the time limit prescribed under the statute.

12. In view of Sub-clause (3) of Section 47-A and the judgments referred to above, the reliance of the learned first Appellate Court on Abhinav Kumar''s case (supra) is not well founded.

13. Consequently, the revision petition is allowed. The order passed by the learned first Appellate Court is set aside and that of the Collector is restored.